IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4000 OF 2006

Makarand Trivikram Deshpande ...Applicant
vs.
The Executive Magistrate & Anr. ...Respondents

Mr.Kuldeep S. Patil for the Applicant
Mr.A.S.Shitole,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : NOVEMBER 15,2006.

P.C.:

1. Rule. Learned A.P.P. waives service for State. Taken up for hearing forthwith.

2. The challenge in this Application under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code) is to the proceedings of Chapter Case No.326 of 2006 pending before the first Respondent. The grievance of the Applicant is that the Applicant was arrested and was produced before the first Respondent and immediately an order was passed under sub section 3 of section 116 of the said Code directing the Applicant to furnish an interim bond. The submission of the Applicant is that there is neither any order under section 111 of the said Code passed by the first Respondent nor any show cause notice is issued on the basis of the said order.

3. The learned A.P.P. has produced a xerox copy of the file of the case for my perusal. The file shows that an Application was made by the Assistant Inspector of Police, Umbraj Police Station before the first Respondent praying for

initiation of proceeding under section 107 and for a direction for execution of bond as required by sub section 3 of section 116 of the said Code. It appears that there is no order passed by the first Respondent under section 111 of the said Code and there is no show cause notice issued under section 111 of the said Code. A learned Single Judge of this court in the case of Smt.Christalin Costa and others Vs. State of Goa and others [1993 (2) Mh.L.J. P. 1409] held that the proceedings under Chapter VIII of the said Code can start only after the Magistrate has made an order under section 111 of the said Code. Moreover, it is held that no person can be directed to execute the bond unless a show cause notice is issued to him and the such show cause notice can be issued only after passing the order under section 111 of the said Code. In the present case, there is no order passed under section 111 of the said Code and there is no notice issued on the basis of the said order. Hence, no proceeding under Chapter VIII could have been initiated against the Applicant without compliance with requirement of law.

4. Hence, I pass the following order :

i) The proceeding of Chapter Case No.326 of 2006 is quashed and set aside. Consequently, the order directing the Applicant to execute an interim bond does not survive. Therefore, the Bond executed by the Applicant cannot be enforced.

ii) Rule is made absolute in above terms.

JUDGE